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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 vs.

12 Jared Lee Loughner,

13 Defendant.
14

CASE NO. 11cr0187 TUC LAB

ORDER RE: CASE DOCKET

15 On March 4, 2011, Phoenix Newspapers, Inc. moved to unseal all documents that
16 have been filed under seal in this case, along with the entries in the case docket that
17 correspond to those documents. (Doc. No. 132.) The Court addressed PNI's motion at a
18 hearing on March 9, 2011, and represented that, going forward, it would not permit the
19 parties to lodge documents under seal with the Clerk without preauthorization by the Court
20 based upon a legally-adequate showing of good cause. But it's worth noting that even before
21 PNI filed its motion to unseal documents and the docket entries, the Court had *sua sponte*
22 established a different and more transparent protocol for filing documents under seal in this
23 case. (Doc. No. 126.)

24 The standards for sealing judicial records are well established, and will be strictly
25 followed in this case. Unless a particular document has "traditionally been kept secret for
26 important policy reasons," *Times Mirror Co. v. United States*, 873 F.2d 1210, 1219 (9th Cir.
27 1989), "a strong presumption in favor of access to court records" should be the starting point.
28 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). This means

1 a party seeking to seal a pleading must articulate compelling reasons for the sealing; a court
 2 must then balance those reasons against the public's interest in, and corresponding
 3 presumption of, openness. "This presumption of access may be overcome only on the basis
 4 of articulable facts known to the court, not on the basis of unsupported hypothesis or
 5 conjecture." *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (internal quotations
 6 omitted). A court should not seal a document without stating clearly the reasons for doing
 7 do. *Id.*

8 Although the Clerk has halted the practice in this case of automatically sealing
 9 documents without prior Court approval, the public docket contains a number of leftover gaps
 10 and no accounting for them. This Order is intended to explain and close those gaps. In
 11 particular, this Order addresses documents that were under seal when the motion was filed,
 12 and with respect to which there is no visible sealing order in the docket that sheds light on
 13 the basis for the sealing. It provides an inventory of sealed documents that the Court
 14 believes have been properly sealed, *and* unseals documents that were improvidently sealed.

15 Accordingly, the Court directs the Clerk to take the following actions with respect to
 16 the below-listed docket entries in this case:

- 17 1) **Doc. No. 1**, the unredacted complaint against the defendant, **will remain sealed**
 18 because it contains his home address. A redacted complaint appears at Doc. No. 2.
- 19 2) **Doc. No. 3**, the arrest warrant issued for the defendant, **may be unsealed**.
- 20 3) **Doc. No. 9**, a financial affidavit of the defendant, **will remain sealed** because it
 21 contains his confidential financial information.
- 22 4) **Doc. No. 15**, a Pretrial Services bail report, **will remain sealed** pursuant to 18 U.S.C.
 23 § 3153(c)(1).
- 24 5) **Doc. Nos. 25, 26, 27, 30, 31, 32 and 33**, which relate to a single *ex parte* motion filed
 25 by the defense, **will remain sealed** because they reveal defense strategy.
- 26 6) **Doc. Nos. 34, 35, 38, 39, 40, 41, 42, and 43**, defense motions and Court orders
 27 relating to the defense's access to Bureau of Prisons records of the defendant, **may**
 28 **be unsealed**.

- 1 7) **Doc. No. 44**, the unredacted original indictment, **will remain sealed**, pursuant to the
2 practice of the District of Arizona, because it contains the signature of a member of
3 the grand jury. A redacted indictment appears at Doc. No. 36.
- 4 8) **Doc. Nos. 49, 50, 51, 52, 53, 54, 55, 59, 60, 65, 66, 118, 119, 124, 125, and 167**,
5 motions and Court orders relating to confidential grand jury matters, **will remain**
6 **sealed**.
- 7 9) **Doc. Nos. 61, 62, 105, 106, 113, and 114**, motions regarding the BOP's release of
8 records, **shall be stricken from the docket**. The Court denied the defense's request
9 to file these materials under seal, and the defense instead filed the motion that
10 appears at Doc. No. 122. **Doc. Nos. 107 and 108**, however, which constitute the
11 evidentiary basis for the defense's motion, **will remain sealed**. **Doc. Nos. 120 and**
12 **121**, in which the defense withdrew the above-stricken documents, **may be unsealed**.
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- 14 10) **Doc. Nos. 63, 64, 90, 91, 92, 166, 172, 176, 177, 187, 189, 190, 192, and 205**
15 concern defense counsel's billing under the Criminal Justice Act, and **will remain**
16 **sealed**.
- 17 11) **Doc. Nos. 67, 68**, concerning PNI's motion to unseal search warrant materials, **may**
18 **be unsealed**. The Court resolved that issue in an order that appears at Doc. No. 150.
19 However, **Doc. Nos. 87, 98, 101, 102, 103, 104, and 154**, which concern the
20 unredacted search warrant materials, **will remain sealed**. The redacted materials
21 appear at Doc. No. 152.
- 22 12) **Doc. No. 130**, the unredacted superseding indictment, **will remain sealed** because
23 it contains the signature of a member of the grand jury. A redacted indictment
24 appears at Doc. No. 129.
- 25 13) **Doc. Nos. 69, 74, 75, 76, and 100**, orders and minutes from a closed hearing held
26 on February 4, 2011, **will remain sealed**. The hearing concerned confidential grand
27 jury matters, an application to appoint counsel for the defendant's parents, and the
28 Bureau of Prison's protocol for handling any incoming or outgoing mail to or from the

defendant.

14) **Doc. Nos. 142, 143, and 144**, an exhibit to the defense's status report at Doc. No. 133, contain confidential defense strategies and **will remain sealed**.

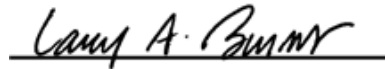
15) **Doc. No. 155**, the minutes of an *ex parte* hearing with defense counsel, **will remain sealed**.

16) **Doc. Nos. 194, 200, and 214**, a motion and briefing concerning the protocol for handing the defendant's incoming and outgoing mail, **will remain sealed**.

If the defendant or the Government objects to unsealing the documents identified in this Order under headings (2), (6), (9), or (11), they must lodge with the Court by no later than Friday, June 3, 2011 the basis for their objection. The Court will allow the parties this opportunity on the ground that it may be overlooking a legitimate reason for sealing the identified documents. In the absence of a further order of the Court, the Clerk shall unseal the docket entries identified headings (2), (6), (9), and (11) on Friday, June 10, 2011.

IT IS SO ORDERED.

DATED: May 23, 2011



HONORABLE LARRY ALAN BURNS
United States District Judge